

Supreme Court Summaries

Opinions filed May 19, 2016

Commonwealth Edison Company v. Illinois Commerce Commission, 2016 IL 118129

Appellate citation: 2014 IL App (1st) 130544

JUSTICE KILBRIDE delivered the judgment of the court, with opinion.

Chief Justice Garman and Justices Freeman, Thomas, Karmeier, Burke, and Theis concurred in the judgment and opinion.

The Illinois Power Agency Act, which took effect June 1, 2009, addressed “sourcing agreements” for retrofitted clean coal electric energy facilities. Meredosia, in Morgan County, was the site of one such potential facility. It was planned to be retrofitted as the world’s first near-zero emissions coal power plant and was known as the FutureGen 2.0 “clean coal” project. Its operation was initially projected to begin in 2017. In an effort to secure private investment for the project, the Illinois Commerce Commission entered orders in late 2012 and early 2013, finding that it had authority under the Act to force public utilities and privately owned electric suppliers to purchase all of the new plant’s electrical output over a 20-year period. Commonwealth Edison and Ameren, the state’s two largest utility companies, were to negotiate “sourcing agreements” on behalf of themselves, as well as the state’s smaller, privately owned and competitively operated electric suppliers. The Commission’s authority under the Act to so order was challenged, but, in July 2014, the appellate court affirmed the Commission. Leave to appeal to the Illinois Supreme Court was allowed, but the federal government suspended the funding for the project in 2015, while the appeal was pending. Project development efforts ceased, and the sourcing agreements were terminated. Thus, this appeal raises the question of mootness. Because this is the Commission’s first application of the relevant provision of the Act, this is a matter of first impression.

There is no dispute that this appeal is now moot. However, appellants have asked the supreme court to utilize the “public interest” exception to the mootness doctrine to address whether the Commission had statutory authority to force electric suppliers to enter into sourcing agreements as it did here. In this decision, the supreme court declined to apply the exception. The exception has three requirements, all of which must be clearly met. None of those criteria are met here. Any public nature of the question presented here ceased with the termination of the project. Because this is a case of first impression, there is no need for an authoritative determination for the guidance of public officials, there are no conflicting precedents, and the law is not in disarray. The appellants are merely speculating when they suggest that this question is likely to come up again. The exception is not applicable, and the appeal was dismissed as moot.

The appellants suggested that supervisory authority should be exercised to

vacate the appellate court's opinion (as opposed to its judgment). They also sought vacation of the Commission's original orders. The supreme court said that, because the appeal is moot, it would not reach the merits. Because it was unable to pass on the correctness of the appellate court's opinion affirming the Commission's orders, the supreme court vacated the judgment of the appellate court without expressing any view as to the merits of the appellate court's opinion.

As to the orders, the appellants expressed concern that, if they are left standing, the Commission may attempt to enter similar orders in the future. The supreme court noted that the Commission is a legislative, rather than a judicial, body. Its orders are not precedential and cannot become *res judicata*. In the future, the Commission is free to deal with any new situation as it sees fit. Because the orders are not preclusive, no vacation of any portion of them is necessary.